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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,060	03/28/2006	Guido Schnyder	101215-216	9386
27387	7590	03/04/2008	EXAMINER	
NORRIS, MC LAUGHLIN & MARCUS, P.A. 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			BLATT, ERIC D	
			ART UNIT	PAPER NUMBER
			3734	
			MAIL DATE	DELIVERY MODE
			03/04/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/574,060	SCHNYDER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric Blatt	3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 January 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 22-41 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 22-41 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 28 March 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3-28-2006, 12-21-2006</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 21-41, said claims recite indefinite language, i.e. "such as a stape or rivet," "in particular a puncture," "such as oxides," "such as colloidal particles," and "such as soluble salts." It is unclear whether these phrases limit the scope of the claims or merely suggest possible embodiments within the scope of the claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kanner (US 6,506,210) in view of Bolz et al. (US 6,287,332).

Regarding claims 22-41, Kanner discloses a staple (Figure 4) for urging together two or more portions of a tissue body wherein the staple is made from a bioresorbable material. Kanner does not disclose further details of the bioresorbable material.

Bolz discloses a medical member comprising a bioresorbable material which is transformable in said tissue into smaller elements such as colloidal particles. (Column 2, Lines 45-55) Said material is a metal alloy containing a first component which covers itself with a protective oxide coat and a second component which ensures sufficient dissolution of the oxide coat. (Column 2, Lines 26-33) Said first component comprises magnesium. The corrosion products originate therefrom in the form of soluble salts, fine particles, or colloidal particles, or a mixture thereof. (Column 2, Lines 45-55) The alloy contains zinc as a corrosion-inhibiting component and calcium. The zinc/calcium weight ratio is at least 21/1. (Column 4, Lines 2) The alloy contains sodium and magnesium. The material is an alloy of zinc and titanium wherein the alloy has a weight percentage of titanium of 0.1% to 1%. (Column 4, Lines 45-55) The member comprises a support body made of a substantially pure first metal and a local electrode made of a second metal which is in contact with the support body to produce a contact voltage and a resulting current that leads to active degradation of the sealing member. (Column 3, Lines 35-52) The local electrode is a coat on the support body or, alternatively, is a metal part attached to the support body. (Column 3, Lines 52-58) The support body consists essentially of zinc, and the local electrode consists essentially of a precious metal. (Column 4, Lines 24-27) Said coat is deposited by electroplating. The member is made of a phosphorus-containing alloy. (Column 4, Lines 12-16) The alloy is

hydrogen-treated. (Column 2, Lines 55-65) The alloy corrodes at such a rate that gases arising during corrosion physically dissolve in a body fluid to which the alloy is exposed. (Column 2, Lines 45-55)

It would have been obvious to modify the apparatus of Kanner by having the staple be made of the bioresorbable materials disclosed in Bolz in order for the staple to have desirable bioresorptive properties as taught by Bolz.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Blatt whose telephone number is (571)272-9735. The examiner can normally be reached on Monday-Friday, 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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571-272-9735

/Todd E Manahan/  
Supervisory Patent Examiner, Art Unit 3731